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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 UNITED STATES FIRE INSURANCE
12 COMPANY, a corporation,

13 Plaintiff,

14 vs.

15 VESTA STRATEGIES, LLC, a limited liability
16 company; SAMUEL W. HENKA, an
individual,

17 Defendants.
18

Case No.: C 09 02388 JW PVT

**STIPULATION AND ORDER FOR
DISMISSAL OF CLAIMS AGAINST
DEFENDANT SAMUEL HENKA,
WITHOUT PREJUDICE**

19 Plaintiff United States Fire Insurance Company and defendant Samuel Henka stipulate
20 as follows:

21 1. On May 27, 2010, the Court entered an Order on various motions including U.S.
22 Fire's Motion for Judgment on the Pleadings against Henka's Counterclaim (Docket # 181).
23 That Order dismissed Henka's Counterclaim against U.S. Fire with prejudice and operated to
24 resolve or render moot all claims between Henka and U.S. Fire.

25 2. In order to streamline the litigation of the remaining issues in this action and to
26 avoid litigating issues that are moot at the present time, Henka and U.S. Fire desire to have U.S.
27 Fire's claims against Henka dismissed without prejudice to the positions of either party
28 following any future appellate review.

1 3. Accordingly, Henka and U.S. Fire request that the court dismiss U.S. Fire's
2 claims against Henka without prejudice, pursuant to Federal Rule of Civil Procedure 41, with
3 each party to bear its own costs and attorney's fees.

4 DATED: October 29, 2010

5 BULLIVANT HOUSER BAILEY PC

6
7 By /s/ Andrew B. Downs
8 Andrew B. Downs, SBN 111435

9 Attorneys for Plaintiff United States Fire Insurance
Company

10 DATED: 10/29/10

11 HOLLISTER & BRACE

12
13 By /s/ Peter L. Candy (by e-mail authorization)
14 Robert L. Brace, SBN 122240
Peter L. Candy, SBN 149976

15 Attorneys for Thomas Dillon, Court-Appointed
16 Receiver for defendant Vesta Strategies, LLC and
for defendant Samuel Henka

17 **ORDER**

18 The parties having stipulated and good cause appearing,

19 IT IS HEREBY ORDERED that plaintiff United States Fire Insurance Company's First
20 Amended Complaint is dismissed without prejudice as to defendant Samuel Henka only, with
21 each party to bear its own costs and attorney's fees.

22 DATED: November 2, 2010

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24 
United States District Judge

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